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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,376	03/01/2004	Ross W. Bauer	RB-001US	4254
7590 11/04/2004				
PATRICK REILLY BOX 7218 SANTA CRUZ, CA 95061-7218		EXAMINER SHAW, ELIZABETH ANNE		
		ART UNIT 3644		PAPER NUMBER

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/790,376

**Applicant(s)**

BAUER, ROSS W.

**Examiner**

Elizabeth A. Shaw

**Art Unit**

3644



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7-9 and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by McAlister (5,363,804). McAlister shows a protective cover 10 for a heat emitting structure comprising fabric 12 having a sensual quality pleasant to a plurality of animals including cats and dogs, col. 2, lines 46-60. The cover 10 being a quadrilateral rectangle and having a surface area large enough to comfortably contain the animal using it, at least 20 inches preferably larger to allow larger or multiple animals to use the cover. The cover also contains an odor pleasant to at least some animals such as cats, col. 3, lines 39-41. It is considered that any part of the cover can act as a pillow section, since no other structure is noted, a pillow section can be any area where the animal places it's head down, that area being a "pillow" section for the head of the animal.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over McAlister in view of Moore et al (5,144,911). McAlister does not teach the use of fleece. Moore et al show an animal bed 10 having a cover 16 composed of fleece, see col. 3, line1. With respect to claim 6, to use the fleece material of Moore et al with the cover of McAlister would have been obvious to one skilled in the art as a replacement of functional equivalents.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over McAlister in view of Kaplan (D447,607). McAlister does not teach the use of a shape. Kaplan shows a pet bed formed in the shape of a cartoon character. With respect to claim 10, to use the shaped bed of Kaplan with the cover of McAlister would have been obvious to one skilled in the art in order to alter the aesthetic appeal of the device.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over McAlister in view of Sandbeck (D465,687). McAlister does not teach the use of a logo. Sandbeck shows a protective cover having a shape on the surface such as a logo, see fig. 7. With respect to claim11, to use the logo of Sandbeck with the cover of McAlister would have been obvious to one skilled in the art in order to alter the aesthetic appeal of the device.

Claims 12-14 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over McAlister in view of Wechsler (6,751,816). McAlister does not teach rolling or hanging of the device for storage. Wechsler shows a cover 50 capable of being used as an animal cushion configured for roll-up, see figures 4-6, the cover 50 also having a hanging feature 53 to allow the cover to be stored by hanging. With

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respect to claims 12 and 18, to use the strap 53 of Wechsler with the device of McAlister as an attachment means would have been obvious to one skilled in the art in order to secure the device to its location so that the animal using the device does not push the device from its resting area. With respect to claims 13 and 14, to use the roll-up and hanging feature of Wechsler with the device of McAlister would have been obvious to one skilled in the art in order to provide various space-saving methods of storing the device when not in use. With respect to claims 19 and 20, the cover of the combination of McAlister and Wechsler capable of being placed on the hood of a vehicle would have been obvious to one skilled in the art in order to give the animal the benefit of the heat emitted and the height of the vehicle, further the cover can be used on any flat or mostly flat surface of the owner's choosing.

### ***Conclusion***

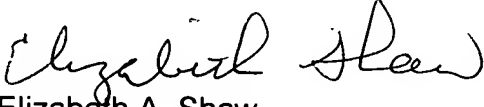
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Included for further reference on animal cushions are: Perdelwitz, Jr. et al (4,892,769), Peeples et al (6,237,531), Wang (6,622,652), Tweel et al (2004/0000373), St. John (D368,335) and Laughlin (D 375,596).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth A. Shaw whose telephone number is 703-308-1853. The examiner can normally be reached on M-Th 9:00-4:30.

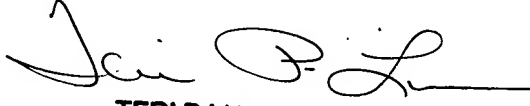
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Elizabeth A. Shaw  
Examiner  
Art Unit 3644

October 26, 2004

  
TERI P. LUU  
SUPERVISORY PRIMARY EXAMINER